



Department of the Treasury
Internal Revenue Service

MAY 8 2000

Person to Contact: [REDACTED]

Contact Telephone Number: [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

CERTIFIED MAIL

Dear Sir or Madam:

We have considered the information submitted in support of your application for recognition of exemption under section 501(c)(3) and have determined you do not qualify under this section. Our reasons for this conclusion and the facts on which it is based are explained below.

The evidence submitted indicates that [REDACTED] was incorporated under [REDACTED].

Your Articles of Incorporation state that you were organized and shall be operated for religious, charitable, scientific, literary or educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, including the making of distributions to organizations that qualify as exempt organizations under such section.

Your organization was organized for the purpose of promoting the arts. The activities consist of providing its membership, local and regional artists, as well as emerging artists, space to create, display and promote their art. The Corporation provides public exposure and recognition of local artists' work. Dedicated to expanding community cultural horizons, the membership is committed to educating the general public and local schools about various art styles and techniques through exhibitions, tours, and classes.

Income is from sales, membership fees, event fees, contributions, hosting fees, other, carpet fund, insurance, rental fees, and jury fees. Expenditures are for artists' costs, occupancy, gallery supplies, advertising, other, postage, office supplies, hosting fees, insurance, and bank fees.

The Corporation's membership is presently limited to local artists, emerging or professional. Emerging, as well as established artists are considered for exhibition as guest artists or for juried artist members. A panel of resident artists views the work of applicants, which are chosen for their knowledge of fine arts and crafts. Acceptance is based on artistic merit after viewing the body of work submitted. The committee views and considers the body of work based on mastery of technique, creativity, use of materials, consistency, and professional presentation. Potential members must present their work and demonstrate their level of expertise in the field. Dues are \$ [REDACTED] per month for exhibiting artists, \$ [REDACTED] per month for associate members (non-residents), and \$ [REDACTED] per month for residents. The dues are used to pay shared expenses such as electric, gas, paper supplies, cleaning service, advertising expenses, etc.

[REDACTED]

[REDACTED]

Your activities are held on the premises rented from [REDACTED]. The verbal agreement indicates the rent is approximately \$ [REDACTED] per month, which is divided among the artists in the Co-op. The rent may fluctuate month to month, based on the number of artists currently displaying work in the gallery. Each individual renting space pays [REDACTED] directly. [REDACTED] does not receive any monies for rental of space to the artists. The gallery is open to the public free of charge. Works of member artists are exhibited and offered for sale. The gallery is completely artists managed. Special group shows or one-person shows are held in the studios and galleries. The public may purchase all works displayed. Any deficits that occur are covered by special assessments of the members.

Each exhibiting artist is expected to sit or "sit" the gallery for one day per month. If he is unable to do that he may pay another willing artist to "sit" the gallery in his place. The value of doing this for one day was decided by the membership to be \$ [REDACTED]. This money is a flow through to the gallery and is subsequently paid to the "sitter". These funds are shown in the books as "[REDACTED]". Resident, exhibiting, associate members, and guest artists are free to list their art for sale, or not, as they wish. Some members wish to show their art only, others need to try to sell their work to support themselves and help pay for their expenses and livelihood. No commission is charged for resident, exhibiting and associate artists' sales. Occasionally, for fundraising exhibits only, a commission of [REDACTED] % for the gallery is charged with the other [REDACTED] % going to the artist.

The organization conducts educational tours arranged with local schools, colleges, and nonprofit organizations to tour the premises and to view whatever exhibit is presently being shown. At least once a month, a group from the public will come to view the work of the artists or to ask questions.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, scientific, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(c)(1) of the income tax regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Regulations 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for educational purposes unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Revenue Ruling 66-178, 1966-1 CB 138, holds that an organization that fosters and develops the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are gratuitously displayed may qualify for exemption under section 501(c)(3) of the Code. The organization does not sell or offer the displayed works for sale.

In Revenue Ruling 71-395, 1971-2 CB 228, a co-operative art gallery was formed and operated by a group of approximately 50 artists for the purposes of exhibiting and selling their works. Additional artists are admitted to membership by approval of the existing members. The gallery is open to the public six days a week. No admission is charged. Works of the member artists are exhibited and offered for sale. Special showings by individual members are also held on a rotating basis. Any deficits that occurred are covered

[REDACTED]

by special assessments of the members. This organization did not qualify for exemption under section 501(c)(3) of the Code.

Revenue Ruling 76-152, 1976-1C.B. 151, holds that an organization formed by art patrons to promote community understanding of modern art trends by selecting for exhibit, exhibiting, and selling art works of local artists, retaining a commission on sales less than customary commercial charges and not sufficient to cover the cost of operating the gallery, does not qualify for exemption under section 501(c)(3) of the Code.

Your activities are similar to those in Revenue Rulings 71-395 and Revenue Ruling 76-152, in that, the organization is a co-op gallery engaged in exhibiting and selling art works of the members. The artists are being directly benefited by the exhibition and sale of their works, with the result that a major activity of the organization is serving the private interests of those artists whose works are displayed for sale. In one instance, 10% of sale proceeds were turned over to the individual artist. The cooperative gallery is engaged in showing and selling only the works of its members.

While some of your activities are educational, your main purpose is to provide space for cooperative member artists to display, exhibit, and sell their work and is a vehicle for advancing their careers and promoting the sale of their work. It serves the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

Moreover, it has been held that the presence of a single non-charitable or non-educational purpose, if substantial in nature, will preclude exemption under section 501(c)(3) regardless of the number of truly charitable or educational purposes. *Better Business Bureau v. U.S.*, 326 U.S. 279 (1945) CT.d 1650 CB 1945, 375.

Therefore, since you do not meet the operational test of section 501(c)(3) we have concluded that you do not qualify for exemption under this section. In accordance with this determination, you are required to file federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate state officials.

If you do not accept our findings, we recommend that you request a conference with a member of our Regional Office of Appeals. Your request for a conference should include a written appeal giving the facts, law and any other information to support your position as explained in the enclosed Publication 892. You will be contacted to arrange a date for a conference. The conference may be held at the Regional Office, or if you request, at any mutually convenient district office. If we do not hear from you within 30 days from the date of this letter, this determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all of the information required by Publication 892 will be returned for completion.

Sincerely yours,

Steven T. Miller

Steven T. Miller,
Director, Exempt Organizations

Enclosures: Publication 892